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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )

Telephone Number Portability )

CC Docket No. 95-116  
RM 8535

REPLY COMMENTS OF GTE

GTE Service Corporation, on behalf  
of its affiliated domestic telephone  
operating and wireless companies

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**REPLY COMMENTS OF GTE**

GTE Service Corporation, on behalf of its affiliated domestic telephone operating and wireless companies, respectfully submits its reply comments in response to the *Further Notice of Proposed Rulemaking* in the above-captioned proceeding.<sup>1</sup>

**I. SUMMARY**

In its initial comments, GTE proposed a detailed framework for recovering the costs of implementing number portability.<sup>2</sup> Specifically, GTE urged the Commission to allow carriers to recover all of their number portability implementation costs through a pooling mechanism. To ensure competitive neutrality as mandated by the Telecommunications Act of 1996

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<sup>1</sup> *First Report and Order and Further Notice of Proposed Rulemaking*, FCC 96-286 (released July 2, 1996) ("*First Report and Order*" and "*FNPRM*").

<sup>2</sup> A detailed description of the operation and administration of GTE's proposed cost pooling mechanism is included in the initial comments filed by GTE in this proceeding. See Comments of GTE at 12-14 ("GTE").

("1996 Act"),<sup>3</sup> the cost pool would be funded from two sources: (1) a uniform, mandatory charge on all customers of local service; and (2) a per-call charge collected by providers of interexchange toll service from their customers. As shown below, GTE's proposal is the only competitively neutral method for recovery of number portability costs. No other proposed cost recovery method meets the statutory requirement and allows carriers to recover *all* of their costs.

GTE also requested that the Commission refine certain aspects of its cost classification scheme. First, GTE encouraged the Commission to clarify that costs incurred to modify existing network functions, such as Operational Support Systems ("OSS"), are recoverable as Category 2 costs. Second, GTE suggested that the costs incurred for upgrades solely to deploy number portability should also be recoverable as Category 2 costs. The record supports GTE's showing that such costs, which would not have been incurred "but for" the need to implement number portability, are appropriately recoverable.

GTE continues to support the proposals articulated in its opening comments and believes that the recommended cost pooling arrangement is the most equitable mechanism for achieving true competitive neutrality.

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<sup>3</sup> See 47 U.S.C. § 251(e)(2).

**II. THE OPENING COMMENTS REVEAL STRONG SUPPORT FOR GTE'S PROPOSAL TO ALLOW CARRIERS TO RECOVER ALL OF THEIR NUMBER PORTABILITY COSTS FROM A COST POOL FUNDED THROUGH MANDATORY END USER CUSTOMER CHARGES**

In its initial comments, GTE indicated that the best method for achieving competitive neutrality was to recover costs through a cost pool, whereby all end user customers of both local services and interexchange toll services would be assessed an explicit, uniform charge.<sup>4</sup> Numerous commenters join GTE in endorsing the use of a mandatory end user customer charge<sup>5</sup> and a pooling arrangement.<sup>6</sup>

**A. End User Charges Are the Best Method for Ensuring Full and Fair Cost Recovery**

The record in this rulemaking establishes that direct recovery from end user customers is an appropriate method of recovery.<sup>7</sup> First, "the Act in no

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<sup>4</sup> GTE at 3, 9, 11.

<sup>5</sup> See Comments of Ameritech at 2, 8 ("Ameritech"); Comments of Bell Atlantic at 8 ("Bell Atlantic"); Comments of California Department of Consumer Affairs at 12 n.5, 22-23 ("California Consumer Affairs"); Comments of Cincinnati Bell Telephone Company at 6, 7-9 ("Cincinnati Bell"); Comments of General Services Administration at 9-10 ("GSA"); Comments of NYNEX at 11 ("NYNEX"); Comments of Pacific Telesis Group at 10 ("Pactel"); Comments of SBC Communications at 12, 14-15 ("SBC"); Comments of United States Telephone Association at 18-20 ("USTA"); Comments of U S West at 5-9 ("U S West").

<sup>6</sup> See, e.g., Comments of BellSouth at 8 ("BellSouth"); Comments of the Florida Public Service Commission at 4-5 ("Florida PSC"); GSA at 4-5; GTE at 2-3, 8, 12-14; NYNEX at 9-12.

<sup>7</sup> See *supra* note 5.

way prohibits recovery of such cost from consumers. The Act gives the Commission broad authority to determine the appropriate recovery mechanism, as long as the recovery is competitively neutral."<sup>8</sup> Second, the reality is that if costs are not passed onto end users, an unconstitutional taking of property may result.<sup>9</sup> Third, since customers are the ultimate beneficiaries of number portability, it is reasonable for them to bear the costs.

Although many other commenters also support an end user charge on customers, there are conflicting views on how to calculate the assessment. Parties, such as Bell Atlantic and NYNEX, urge the Commission to set the charge as a percentage of total telecommunications revenues<sup>10</sup> rather than a flat rate, as advocated by GTE. Such revenue-based schemes are problematic because they discriminate based on technology. Higher-priced services that offer local exchange calling capability along with mobility (*e.g.*, cellular and PCS) would be severely penalized, thereby hindering competition. In addition, it will be very difficult to determine the appropriate base charge against which a percentage could be applied in the case of bundled service packages that include optional extended area calling plans and vertical services. Thus, to avoid these pitfalls, the Commission should require a flat rate charge.

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<sup>8</sup> Cincinnati Bell at 5.

<sup>9</sup> See, *e.g.*, GTE at 9-10; U S West at 8-9.

<sup>10</sup> Bell Atlantic at 8; NYNEX at 11-12.

The Commission should also reject Ameritech's proposal to impose an equal surcharge without pooling.<sup>11</sup> This recovery method will result in discrimination as it fails to provide a link between costs incurred and costs recovered. Under such a system, low cost, high density carriers will have huge advantages. Pooling is therefore necessary to prevent disproportionate cost recovery.

**B. Cost Pooling Is Required By the Disparities in Burdens Among Carriers in Implementing Number Portability**

As several parties explained in their opening comments, the costs of implementing number portability are not evenly distributed among carriers.<sup>12</sup> Costs are uneven due to the size of central offices and the number of switches. For example, "[l]arger carriers [ ] will have more switches to update, thereby increasing their total software costs."<sup>13</sup> Accordingly, GTE and others support cost pooling as a matter of fairness and as necessary to achieve competitive neutrality.<sup>14</sup>

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<sup>11</sup> See Ameritech at 8.

<sup>12</sup> California Consumer Affairs at 20; Cincinnati Bell at 4; GTE at 8.

<sup>13</sup> Cincinnati Bell at 4.

<sup>14</sup> See *supra* note 6.

AT&T's assertion that cost pooling "will promote inefficiency without countervailing benefits"<sup>15</sup> is faulty. In fact, as the Florida Public Service Commission states, the risk of inefficiency from a pooling mechanism is slight.<sup>16</sup> "Whether the pooled costs are allocated based on some measure of revenues or subscriber lines, the incumbents will still pay a large percentage of these costs and therefore, have an incentive to implement number portability in the most efficient manner."<sup>17</sup>

AT&T's concern is particularly ironic given that it is a proponent of the Location Routing Number ("LRN") proposal -- a method whose implementation costs are estimated to be far in excess of Query on Release ("QOR"), an option supported by GTE. By requiring carriers to perform queries on all inter-switch calls, AT&T's LRN solution would impose massive costs on incumbent carriers, which have more switches, and thus more inter-switch traffic. In contrast, because of compatibility with the existing system, QOR will significantly minimize such costs, resulting in more efficient number portability implementation. Moreover, GTE notes that the opportunities to be inefficient, beyond the inherent inefficiencies of LRN, are limited by the FCC's current criteria for implementation.

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<sup>15</sup> Comments of AT&T at 14 ("AT&T"); see also Ameritech at 7.

<sup>16</sup> Florida PSC at 5.

<sup>17</sup> *Id.*



Finally, a pooling mechanism is required to comply with the 1996 Act's requirement of "competitive neutrality." As discussed more fully below, in the absence of pooling, ILECs will be forced to pass cost increases onto the consumer in the form of higher prices. This result will place ILECs at a competitive disadvantage, contrary to the requirements of the 1996 Act.

**C. No Other Proposed Cost Recovery Method Meets the Statutory Requirement of Competitive Neutrality and Allows Carriers to Recover All of Their Costs**

Under the Act, the cost recovery mechanism for number portability must be "competitively neutral."<sup>18</sup> In the *First Report and Order*, the Commission interpreted the phrase on a "competitively neutral basis" to mean that the "cost of number portability borne by each carrier does not affect significantly any carrier's ability to compete with other carriers for customers in the marketplace."<sup>19</sup> Moreover, most parties correctly recognize that to be "competitively neutral," any cost recovery mechanism adopted by the Commission must ensure that carriers are able to recover all costs incurred to implement number portability.<sup>20</sup> The proposals of AT&T and MCI that

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<sup>18</sup> 47 U.S.C. § 251(e)(2).

<sup>19</sup> *First Report and Order* at ¶ 131.

<sup>20</sup> See, e.g., Ameritech at 7; BellSouth at 4; Cincinnati Bell at 5-6; GTE at 8.

carriers bear their own such costs<sup>21</sup> do not comport with these requirements.

First, AT&T's and MCI's suggestion that carriers can pass their own costs on to consumers completely ignores existing state regulatory constraints on increasing end user charges. In addition, it ignores marketplace dynamics. As GTE pointed out in its opening comments, as competitors enter the market with aggressive pricing of their services, any competing ILEC dependent on rate increases will find itself at a significant competitive disadvantage.<sup>22</sup>

Second, because the costs of implementing number portability are not evenly distributed among carriers, a disproportionate cost recovery mechanism cannot be competitively neutral. Even AT&T acknowledges that ILECs "may be required initially to incur more of these costs to deploy number portability capabilities . . . ." <sup>23</sup> The IXCs should not be allowed to ride free on the LECs' network portability modifications. All carriers benefit from number portability. Accordingly, all should share the costs.

Finally, requiring ILECs to bear fully the costs of implementing number portability will overburden the customers of the ILECs. "If ILECs must absorb the full cost of establishing LNP in their networks, and if they lose customers to CLECs, then the ILEC's remaining customers will be forced to bear a

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<sup>21</sup> See AT&T at 12-14; MCI at 9-10.

<sup>22</sup> GTE at 8-9.

<sup>23</sup> AT&T at 13.

disproportionately large share of the cost of LNP, while those customers who change to a CLEC will bear a disproportionately smaller share of LNP costs because they will not have to pay for LNP implementation in the ILECs' large network."<sup>24</sup> Commenters agree that such a result is wholly inconsistent with "competitive neutrality."<sup>25</sup> In light of the foregoing, the Commission should reject any proposals that require a carrier to bear its own costs of implementing number portability.

**III. CATEGORY 2 TREATMENT IS APPROPRIATE FOR THE COSTS IDENTIFIED BY GTE IN ITS OPENING COMMENTS BECAUSE SUCH EXPENDITURES TO MODIFY AND UPGRADE EXISTING NETWORK FUNCTIONS WOULD NOT HAVE BEEN MADE "BUT FOR" THE REQUIREMENT TO IMPLEMENT NUMBER PORTABILITY**

In the opening round of comments, GTE urged the Commission to "explicitly acknowledge that *any* cost incurred to modify an existing network function that would have not been incurred *but for* the need to implement number portability would be a cost 'directly related to' number portability, and, thus, recoverable as a Category 2 cost."<sup>26</sup> Several parties proposed the same "but for" qualifying test.<sup>27</sup> GTE submits that this is an appropriate test

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<sup>24</sup> California Consumer Affairs at 21.

<sup>25</sup> See, e.g., Ameritech at 7; California Consumer Affairs at 21.

<sup>26</sup> GTE at 4-5.

<sup>27</sup> See, e.g., BellSouth at 6; Cincinnati Bell at 2; U S West at 10-11.

for determining the recoverability of the direct and indirect costs of implementing number portability.<sup>28</sup>

**A. Costs Incurred to Modify Existing Network Functions, Such as OSS, Solely to Accommodate Number Portability Are Recoverable as Category 2 Costs**

GTE supports the description of Category 2 costs as detailed in the comments of NYNEX.<sup>29</sup> There is support in the record for including SS7 and AIN enhancements to accommodate number portability, as well as OSS modifications as Category 2 costs.<sup>30</sup> The suggestion of some parties, such as AT&T and MFS Communications, that such costs should not be recoverable<sup>31</sup> conflicts with technological reality. OSS includes many functions needed to accomplish such basic network functions as routing, billing, provisioning, traffic management, and inter-carrier settlements. It is inevitable that the software required for number portability will require some change in functionality and/or capacity that will necessitate additional

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<sup>28</sup> To the extent the FCC denies recovery of any relevant costs of number portability, exogenous cost treatment under price caps is required. See *FNPRM* at ¶ 230.

<sup>29</sup> NYNEX at 4.

<sup>30</sup> See, e.g., Ameritech at 3; GTE at 5.

<sup>31</sup> See, e.g., AT&T at 12; Comments of Frontier Corporation at 3 ("Frontier"); Comments of MFS Communications at 3 ("MFS"); Comments of Teleport Communications Group Inc. at 9 ("Teleport").

expenditures. Accordingly, it is reasonable to categorize such upgrades as recoverable Category 2 costs.

**B. Costs Incurred for Upgrades Required Solely to Deploy Number Portability Also Should Be Recoverable as Category 2 Costs**

It is clear that some mechanism must be in place to prevent the possibility that some carriers might use this proceeding to foist recovery of their network upgrade costs unrelated to number portability on others.<sup>32</sup> However, there must be some flexibility for carriers that may not have plans for such upgrades because the demand generated from their customers for new services will not be sufficient to allow a recovery of the necessary investment within a reasonable time. Accordingly, GTE recommended that costs incurred for upgrades to implement number portability should be included as Category 2 costs to the extent a carrier could demonstrate through a filing with the Commission that an upgrade of SS7 or other network systems was not part of its historical planning horizon for network investment.<sup>33</sup> The costs incurred for that upgrade should be included as Category 2 costs because the expenditure required would not result in any

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<sup>32</sup> Note that the cost figures presented in GTE's initial comments only cover cost estimates for the wireline LEC provision of GTE's network and do not include number portability costs for GTE long distance or any other wireline subsidiary. See Affidavit of Gregory L. Theus.

<sup>33</sup> GTE at 6.

direct benefit to the carrier. This five-year period is a reasonable time horizon and adequately balances the interests of carriers and consumers in deploying number portability.

However, as GTE discussed in its initial comments, should the Commission determine that such costs are not recoverable, then carriers should be granted waivers on the grounds that number portability is not "technically feasible" for them under Section 251(b)(2) of the 1996 Act absent the upgrade in question.<sup>34</sup> Requiring carriers to incur costs solely to deploy number portability, while not allowing Category 2 cost recovery, would result in an unconstitutional taking of property.<sup>35</sup>

#### **IV. CONCLUSION**

As demonstrated above, the record in this proceeding contains strong support for Commission adoption of GTE's proposal to allow carriers to recover all of their number portability costs from a cost pool funded through mandatory end user customer charges. In addition, the Commission should refine aspects of its cost classification scheme such that costs incurred to

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<sup>34</sup> GTE at 6.

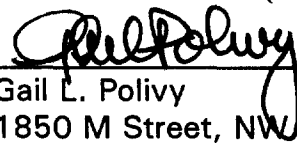
<sup>35</sup> See, e.g., GTE at 6; U S West at 8.

modify existing network functions and costs incurred for upgrades solely to  
deploy number portability are recoverable as Category 2 costs.

Respectfully submitted,

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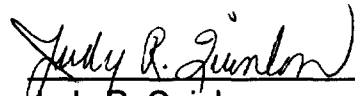
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### **Certificate of Service**

I, Judy R. Quinlan, hereby certify that copies of the foregoing "Reply Comments of GTE" have been mailed by first class United States mail, postage prepaid, on the 16th day of September, 1996 to all parties of record.

  
Judy R. Quinlan